

amended, and consideration is requested of the patentability of claims 16, 18-21 and 23-26 now pending in the application.

(1) Objection to the specification as failing to provide proper antecedent basis for the claimed subject matter, and required correction (pH 2.0)

Applicant respectfully submits that the Examiner take judicial notice that there are many cosmetic ingredients that are used in formulations with a very low pH, for example, citric acid, tartaric acid, glycolic acid, lactic acid, and ascorbic acid. If requested, the Applicant can provide documentation for this known fact. The specification has been amended to provide proper antecedent for the pH set forth in claim 26. Applicant therefore submits that this objection has been overcome.

(2) Rejection of claims 16-26 under 35 U.S.C. 112, second paragraph, for indefiniteness (the terms "vitamin E component", "extract", "the olive-leaf extract")

Applicant respectfully submits that the term "vitamin E component" has been clarified and made definite by the amendment of claim 16 (from which the remaining claims depend) to recite that the vitamin E component is "selected from the group consisting of tocopherols and tocotrienols".

Claims 18 and 20 have been amended so that they do not depend upon a non-elected claim.

Claim 16 has been amended to recite that the extract is a "non-aqueous olive-leaf extract", so that the claims are now consistent and the type of extract has been defined.

Applicant therefore submits that the claims pending herein are patentable under section 112, second paragraph.

(3) Rejection of claims 16-17, 19 and 21-26 under 35 U.S.C. 103(a) as being unpatentable over Neigut (US 5,378,461) in view of Bates (US 4,704,280) in light of Ganguli et al. (5,998,641) regarding an intrinsic property

Applicant respectfully submits that Neigut teaches a topical treatment of skin damage including injury caused by toxins, radiation and aging and includes ubiquinone, vitamin A and vitamin E. This treatment is in an "oil-based carrier, such as squalane" (column 3, line 57) or

other "plant-derived oils, animal derived oil..." (column 5, line 5 to column 6, line 6). Thus, Neigut's treatment in most of its embodiments does not contain olive at all. The Examiner has not pointed to any specific reference in Neigut indicating that olive oil is required or even particularly useful, other than as a carrier for the active ingredients, nor has Applicant been able to find such a reference in Neigut. And even in the embodiment where Neigut might use olive oil, there is not suggestion in Neigut of a product containing a non-aqueous olive-leaf extract according to Applicant's invention. Furthermore, Applicant respectfully submits that olive oil is obtained from the olive fruit and not typically from olive leaves (see, for example, the patent of Ganguli et al. at column 1, lines 13-18).

Applicant respectfully submits that neither 1) the balm of Neigut containing vitamins plus a carrier which can be an oil derived from a plant or an oil derived from animal or a mineral oil; nor 2) a cosmetic lotion containing aloe vera and various vitamins (Bates), nor 3) the knowledge that olive oil contains bitter compounds such as oleuropein (Ganguli et al.), nor the combination thereof, teach or suggest Applicant's product comprising at least about ½ % of a non-aqueous olive-leaf extract; 5-25% L-ascorbic acid; ½ - 2% vitamin E component selected from the group consisting of tocopherols and tocotrienols; and ½ - 2% vitamin A as in claim 16.

Applicant therefore submits for the above reasons that independent claim 16, and claims 19 and 21, and 23-26, which depend therefrom and are now pending herein, are patentable under 35 U.S.C. 103(a) over Neigut (US 5,378,461) in view of Bates (US 4,704,280) in light of Ganguli et al. (5,998,641).

(4) Rejection of claims 16, 18, and 20 under 35 U.S.C. 103(a) as being unpatentable over Meisner (AU 200159311 A-English abstract) in view of Neigut, Bates, Shasha et al. (1960), Fleming et al. (1969) and Fleming et al. (1973)

Applicant respectfully submits that Meisner does not teach or suggest a non-aqueous olive-leaf extract; nor use of L-ascorbic acid; vitamin E or vitamin A, but rather only teaches the use of oleuropein with other chemicals for psoriasis. As discussed above, neither Neigut nor Bates nor the combination thereof teaches Applicant's composition of claim 16 from which the herein rejected claims depend. While the two Fleming references teach that debittering enzymes for oleuropein were previously known as stated by the Examiner, and Shasha et al. teaches that oleuropein can be extracted from all parts of the olive plant, none of these

references individually, in combination, or in combination with Meisner, Neigut and Bates, teach or suggest at least about ½ % of a non-aqueous olive-leaf extract; 5-25% L-ascorbic acid; ½ - 2% vitamin E component selected from the group consisting of tocopherols and tocotrienols; and ½ - 2% vitamin A.

Applicant therefore submits for the above reasons that independent claim 16, and claims 18 and 20 which depend therefrom, are patentable under 35 U.S.C. 103(a) over Meisner (AU 200159311 A-English abstract) in view of Neigut, Bates, Shasha et al. (1960), Fleming et al. (1969) and Fleming et al. (1973)

Conclusion

For all the foregoing reasons, claims 16, 18-21, and 23-26 are submitted to be fully patentably distinguished over the cited references and in allowable condition. Favorable consideration is therefore requested.

No new claims have been added to the previously pending claims. It is therefore believed that no fee is required for the presentation of this amendment other than the separately submitted fee for extension of time. Any amounts that may be due for presentation of this amendment should be charged to Deposit Account No. 02-0825 of Applicant's attorney.

If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a personal or telephonic conference with Applicant's attorney, the Examiner is invited to contact such attorney at the telephone number noted below.

Respectfully submitted,



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Enclosures:

- a) Clean copy of specification (1 sheet) and claims (1 sheet) as amended herein
- b) Petition for Extension of Time and fee



SN 10/074,974

Marked-up Version of Specification Showing Amendments

IN THE SPECIFICATION:

Please amend the paragraph beginning on page 8, line 27 as follows:

(amended) In the preferred product composition of the invention, there is at least about $\frac{1}{2}$ % of an olive extract, preferably utilizing the extracted olive leaves as described above; 5-25% L-ascorbic acid (vitamin C); $\frac{1}{2}$ - 2% vitamin E component(s); and $\frac{1}{2}$ - 2% vitamin A. Most preferably the formulation comprises 1% of the final olive-leaf extract of claim 1; 15-20% L-ascorbic acid; 1-2% vitamin E component; and 1% vitamin A. The olive extract comprises at least one antioxidant phenolic compound, preferably selected from the group consisting of oleuropein and hydroxytyrosol. The vitamin E component is selected from the group consisting of tocopherols and tocotrienols and may comprise α -tocopherol. The product may also contain 1-5% zinc sulfate. The final pH of the product is preferably about 3.0 to 3.5 but may be in the range of 2.0 to 4.5.

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Marked-up Version of Claims Showing Amendments

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IN THE CLAIMS:

Please amend claims 16, 18, 20 and 23 to read as follows and cancel claims 17 and 22, so that claims 16, 18-21, and 23-26 are pending herein:

16. (amended) A product for application to skin, comprising:

- a) at least about ½ % of [an olive] a non-aqueous olive-leaf extract;
- b) 5-25% L-ascorbic acid;
- c) ½ - 2% vitamin E component selected from the group consisting of tocopherols and tocotrienols; and
- d) ½ - 2% vitamin A.

18. (amended) The product according to claim 16, wherein the olive-leaf extract is obtained by a method of extraction of olive leaves, comprising:

- a) treating the olive leaves to inactivate enzymes in the olive leaves;
- b) continuously extracting the treated olive leaves with a non-aqueous solvent, filtering and concentrating to form a first paste;
- c) removing the non-aqueous solvent;
- d) treating in a second solvent treatment step to form a final extract, wherein said final extract contains about 6-10% oleuropein; and

wherein the olive-leaf extract is the final extract [of claim 1].

20. (amended) The product according to claim 18 [16] comprising:

- a) 1% of the final olive-leaf extract [according to claim 1];
- b) 15-20% L-ascorbic acid;
- c) 1-2% vitamin E component; and
- d) 1% vitamin A.

23. (amended) The product according to claim 16, wherein the [olive] olive-leaf extract comprises at least one antioxidant phenolic compound.